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IN THE

Supreme Court of the United States

October Term, 1962

No. 530

RUTH SMITH,

Petitioner,

—against—

UNITED STATES OF AMERICA,

Respondent.

PETITIONER'S REPLY BRIEF

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November, 1962.

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The purpose of this reply brief is to answer the Government's attempt to distinguish certain of the cases relied upon by petitioner. It will also correct in two respects the Government's review of the evidence in its brief in opposition.

Argument

The Government claims (p. 10, footnote 3), that the cases relied upon by petitioner on the issue of consent are distinguishable. The words quoted by the Government from *Ray* v. *United States*, 84 F. 2d 654 (5th Cir.), are not statements of the facts, but are used by the Court to characterize the conduct of the officers to show the absence of a true consent on the part of the defendant. The Government overlooks this portion of the Court's opinion (at p. 655):

> "Though one of them [the officers] testified that after appellant had been arrested he voluntarily told them that he had liquor in his house and took them there and showed it to them, the evidence admits of only one conclusion, that there was only a nominal, not a true volition."

The Court also pertinently said in *Ray* v. *United States*, *supra* (at p. 656):

> "We think it will not do to say under the circumstances disclosed by this record, that there was a real volition in appellant's taking the officers to his home and revealing its contents to them."

The claimed distinctions with *Judd* v. *United States*, 190 F. 2d 649 (D.C. Cir.), and *Channel* v. *United States*, 285 F. 2d 217 (9th Cir.), are likewise without substance. Appellant's detention and interrogation in an automobile on a city street after her arrest were as coercive as presence in jail or in the office of the Federal Bureau of Investigation. The area of search is of no significance because in those cases, as well as in the case at bar, the Government claimed that the search was within the ambit of the alleged consent.

Petitioner does not claim that *Canida* v. *United States*, 250 F. 2d 822 (5th Cir.) held that an accused must be advised of his constitutional rights under the Fourth Amendment before he can legally consent to a search without a search warrant. Petitioner merely quoted relevant language from the *Canida* case in connection with her argument that since a waiver is an intentional relinquishment of a known right, it should be shown that it was intelligently made.

It is also appropriate to point out that the Government makes no attempt to distinguish other cases relied upon by petitioner on the question of consent, at page 17 *et seq.*

In its review of the facts, the Government asserts (p. 8) that the agents learned from the telephone calls and from Thompson after his arrest, that Thompson had set up a rendezvous for a certain time and place between his source of supply and agent Robinson. The record clearly shows that after his arrest, Thompson said that he was the one to receive delivery of the heroin (33a).

The Government claims that the agents had no prior specific information with respect to the apartment where the additional narcotics were seized (p. 9). Although agent Manley testified that he had no prior knowledge of the apartment to which petitioner later took him (47a), agent Cantu testified that after her arrest, petitioner was questioned as to "who was in this apartment that they had been watching" (57a).

CONCLUSION

For the reasons stated in the petition, a writ of certiorari should be granted.

Respectfully submitted,

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